

UTILITY CONSUMER PARTICIPATION BOARD

April 12, 2010

MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, April 12, 2010 in the Ottawa Building, 4th Floor Training Room, Lansing, Michigan.

I. Call to Order

Sister Monica Kostielney called the meeting to order at 10:25 a.m. Board members present: Sister Monica Kostielney and Harry Trebing (via telephone), Marc Shulman (via telephone). Members absent: Alexander Isaac. Others present: Michelle Wilsey, Board Assistant; Chris Bzdok, Michigan Environmental Council; David Shaltz, Residential Ratepayer Consortium; Don Keskey, Public Interest Research Group in Michigan and Michigan Community Action Agency Association; Michael Moody, Assistant Attorney General; Brian Green, Assistant Attorney General; Leah Hall, Citizens Against Rate Excess; James Ault, Michigan Electric & Gas Association; Terry Eklund, DELEG Finance; Wes VanMalsen, DELEG Purchasing & Grant Services.

II. Agenda

Shulman moved, second by Trebing and motion carried to approve the agenda as printed.

III. Minutes

Trebing moved, second by Shulman and motion carried to approve minutes of February 1, 2010 as presented.

IV. Correspondences (Received and placed on file)

Kostielney noted the following materials were received and provided to the board for their review and consideration.

- A. UCRF Financial report through 1/27/2010 (Eklund).
- B. Supplemental Case Report, Consumer Energy Case U-15645 (MEC PIRGIM Grants UCRF 09-01 through 04; and previous grants involving nuclear legacy and Spent Nuclear Fuel (SNF) issues) dated 1/31/2010. (Public Law Resource Center, Keskey).
- C. Case Report on CECO GCR Reconciliation Case No. U-15041-R (MCAAA Grant 09-05 extended) (Public Law Resource Center, Keskey).
- D. Status Report-MCAAA Grants UCRF 10-6, 10-7, 10-8 and 09-05 (extended) (Keskey)
- E. MEC 2009 UCRF Annual Report Data Submission (Bzdok)
- F. Transcript UCPB Meeting 2_1_2010 (Penn)
- G. UCPB Meeting Major Action Summary 2_1_10 (Wilsey)
- H. UCPB Meeting Minutes 2_1_10 (Wilsey)
- I. Financial Section Update for 2009 UCPB Annual Report (Eklund)
- J. CARE Budget Amendment Request for UCRF Grant 10-06 w/ revised budget sheets (Kitchen/Liskey)
- K. UCRF financial report through 3/22/10 (Eklund)
- L. MEC Grant Amendment Request No. 1 – Consumers Rate Case U-16191 for 2009-10. (Bzdok)
- M. RRC 2009 Annual Report Input (Shaltz)
- N. RRC 2009 Annual Report Data Submission – Case Results UCRF Grant No. 08-02 (Shaltz)
- O. RRC 2009 Annual Report Data Submission – Case Results UCRF Grant No. 09-06 (Shaltz)
- P. RRC Case Status Report 3/22/10 (Shaltz).
- Q. CARE 2009 Annual Report Data Submission (Liskey)

Wilsey noted that additional items received after the submission date will be recorded on the next agenda.

V. New Business

A. CARE Budget Amendment Request

Transfer request was examined by the board. Kostielney asked Hall to explain why the transfer was requested. Hall responded that not all funds were utilized in the plan cases and they are putting more time into the reconciliation cases. The transfer would provide adequate funding for the reconciliation cases.

Shulman moved, second by Trebing and motion carried to approve the CARE budget transfer request to UCRF Grant10-09 as follows:

Transfer \$42,510 from PSCR Plan Cases to PSCR Reconciliation cases as follows.

Decrease Budgets

Alpena Plan Case U-16030	-\$408	(-255 legal, -120 expert, -33 admin)
Edison Sault Plan Case U-16044	-\$3,469	(-2,040 legal, -1,380 expert, -49 admin)
I&M Plan Case U-16046	-\$24,386	(-9,575 legal, -14,480 expert, -331 admin)
No States Power Plan Case U-16033	-\$766	(-623 legal, -120 expert, -23 admin)
UPPCO Plan Case U-16031	-\$1,930	(-150 legal, -1,760 expert, -20 admin)
WEPCO Plan CaseU-16034	-\$9,272	(-4,333 legal, -4,800 expert, -139 admin)
WI Pub Ser Plan Case U-16032	-\$2,279	(-680 legal, -1,560 expert, -39 admin)
Total Decrease	-\$42,510	(-17,656 legal, -24,220 expert, -634 admin)

Increase Budget

Alpena Recon Case U-15660-R	\$1,010	(0 legal, 1,000 expert, 10 admin)
Edison Sault Recon U-15674-R	\$2,020	(0 legal, 2,000 expert, 20 admin)
I&M Recon Case U-15676-R	\$12,120	(6,000 legal, 6,000 expert, 120 admin)
No States Recon Case U-15663-R	\$1,010	(0 legal, 1,000 expert, 10 admin)
UPPCO Recon Case U-15661-R	\$12,120	(6,000 legal, 6,000 expert, 120 admin)
WEPCO Recon Case U-15664-R	\$12,120	(6,000 legal, 6,000 expert, 120 admin)
WI Pub Ser Recon Case U-15662-R	\$2,110	(0 legal, 2,089 expert, 21 admin)
Total Increase	\$42,510	(18,000 legal, 24,089 expert, 421 admin).

B. MEC Budget Amendment Request.

Bzdok explained that the MEC asked to transfer about \$7,400 that was unused from a potential Detroit Edison appeal issue to a pending Consumers rate case. The reason they are asking to transfer money from the Edison appeal is that they chose not to pursue it for a variety of reasons. They felt strategically the funds would be better spent in the CECO case. He noted that not all of the funding for the case would be UCPB grant funding. They are working with partner organizations on other issues in the case. Bzdok outlined proposed issues in the workplan. He first discussed the rate-of-return issues. Trebing raised concern that this issue may be out of the scope of authority for UCRF funds. After brief discussion with the board, Bzdok suggested removing the issue from the work plan. The next issue discussed was participation in CECO rate case to examine increased energy optimization spending proposed by

Consumers. The third issue is follow-up work on proposals by CECO to deal with the spent nuclear fuel issues and the request for a trust fund resulting from the work of Don Keskey for the MEC. The fourth issue relates to line losses. This is an issue that MEC is pursuing in the current power supply case, however, CECO has requested it be addressed in the rate case instead. The fifth issue of concern is under-utilization of some of Consumers' own generation resources. Fixed costs associated with maintaining capacity that's not being used affect power supply costs but likely will be addressed in a rate case. Trebing asked if the work on line-losses and efficiency of use of generating plant, beyond the work they are doing for the UCRF, may lead to an examination of the bigger picture and the question of whether creating a regional power authority encompassing most of the Midwest would result in a significant reduction in both line losses and the better use of equipment or generating plant? Bzdok indicated that was a question he could take back to their experts for consideration. Bzdok then addressed concerns raised by Wilsey in her review memo regarding possible duplication with advocacy by the Attorney General. He noted that there was the possibility that the both the attorney general and MEC would address the rate-of-return issue but they that issue is moot since they removed it from the work plan. MEC is still crafting its follow-up position on SNF/trust fund issues. It is unclear whether they will advocate the same position as the attorney general or not. On the other two issues, they would put forward the evidence that they have put forward in the plan case on the same issues. MEC was the only one to file on these issues and they do not know if the AG will take a position or not. They could emphasize and track that involvement that in subsequent reporting to the board. Shulman asked representatives from the AG office to comment on the issues and their potential involvement. Moody noted that sometimes different positions are taken – particularly in the area of energy efficiency. In other cases they may be on the same side but use different approaches. In the specific areas discussed, he did not believe they would go into line losses. They may have looked at under-utilization in the past but he did not believe it was something they had pursued recently. He has no concerns that they would be duplicating at this point. The main concern of the AG's office was the rate-of-return issues and that has been removed from the proposal. They have some concern about the SNF and energy optimization issues as potentially on the edge or outside of the statute. The board has analyzed these issues in the past and has approved funding based on their interpretation of the statute. The AG does not use funds for participation on these issues. Line losses and under-utilization are closer to the statute. The AG position is if there's a PSCR issue or GCR that exist in a rate case, that's proper. Bzdok commented that his understanding is that the last time line losses were addressed was in a 1992 Consumers case. Kostielney noted that while this may be addressed in a rate case, the board is learning about the extent to which many of these issues are interconnected. She stated that she was glad they were bringing light to them. Wilsey asked Bzdok if the same arguments tying energy optimization issues to PSCR issues that persuaded the board previously applied here. Bzdok responded that they believe they are all the same thing. Wilsey asked if it was true that the legislation establishing the energy optimization proceeding required that the costs be reconciled through PSCR proceeding. Bzdok responded affirmatively. Bzdok pointed out to the board that they are working with a partner, NRDC, on the EO cases. They will bring substantial resources to the cases and issues not funded by UCRF. The \$7,400 requested here may be applied to the other areas where there is more need. Wilsey suggested that the board could specify which areas to designate UCRF funding. Bzdok concurred that the board can exercise any option but he requested that the request not be segmented to allow for flexibility to use the funds where there is the

most need/benefit as the cases develop. Shulman asked Wilsey to summarize which of the issues addressed by counsel are consistent with the responsibility of the board and for an opinion of a way that the budget request could be crafted so that it would stay consistent with our policy that we have adopted and approved in the past? She responded that counsel did not express specific concerns about the line loss and under-utilization of generation issues. She further explained that the board has approved participation in energy optimization and SNF issues in the past after thorough vetting and discussion of permissibility under Act 304. These are both continuation of issues previously approved for participation by the board, although the AG staff opinion differs. Wilsey noted that board could approve only the line-loss and under-utilization of generation issues or, the four issues remaining in the request. Kostielney commented that the issues were integrated and found it difficult to parse them out. The amount, \$7,400 is a value to cover the four sections and if partners can assist then it is important for the UCPB relevant issues to be included and funded. It may encourage others to join in the effort. Trebing concurred. Trebing moved, second by Shulman and motion carried to approve the MEC Budget amendment request to add CECO Rate Case U-16191 issues to include line-losses, generation under-utilization, energy optimization and SNF as presented in the work plan to UCRF Grant 10-04 and to transfer \$7,461.37 from appeal of Detroit Edison's self-implementation order in rate case No. U-15768 to CECO Rate Case U-16191 with the breakdown as follows:

Approved DECO Self-Implementation Order U-15768 Appeal \$8,080(7,000 legal, 0 expert, 80 admin, 1,000 filing fee)

Transfer Requested to CECO Rate Case U-16191 - 7,461.37 (-7,387.50 legal, -0 expert, -73.87 admin)

Amended Budget DECO U-15768 Appeal (transfer approved) 618.63 (0 legal, 0 expert, 6.13 admin, 612.50 filing fee)

Budget CECO Rate Case U-16191 (transfer approved) 7,461.37(-7,387.50 legal, -0 expert, -73.87 admin)

Wilsey asked Bzdok what MEC planned for the DECO appeal. He responded that they were not planning to go ahead with the appeal because they do not see the value at this time.

C. 2009 Annual Report – Kostielney noted that the draft of the 2009 annual report was provided to the board for comment/review. She commended the effort. Shulman concurred. Kostielney noted that it was important to plan and pursue public relations along with the release of the report. Ideas suggested included a follow-up letter with a response card for acknowledgement or personal meeting to discuss the report, development of a general interest article or synopsis, press release. Wilsey noted that making a presentation to the Senate Committee was a good opportunity and that should be pursued. Also, press coverage by the grantees in their trade publications and the general media as they experience success on behalf of residential customers. Bzdok noted that MEC's Michigan Environmental Report cover story was on the victory in the SNF cases. Shulman noted that Senator Patterson is aware of the existence of the UCPB and would likely be receptive to giving us a few minutes on the agenda to share information. Kostielney noted that Wilsey could work on the relevant pieces but that the board would have to provide entree to relevant audiences and leadership. Shulman agreed to assist with the effort. Wilsey also noted that she was still awaiting input from some of the grantees. We are past the deadline for submission of information. She requested any additional information be sent in the next two weeks. Kostielney also requested the final report be hand-delivered to key leadership in the house and senate. Wilsey noted that this is the draft and the report will be finalized at the next board meeting.

VI. Old Business – None.

VII. Public Comment – James Ault, MEGA asked to follow-up on discussion and concerns he raised at the last board meeting regarding the SNF case results. Ault noted that following the meeting Keskey gave him a copy of the report he prepared for the board. Ault reviewed the report and acknowledged that it was accurate. His concern was to avoid the impression that the money was collected without authority. The report covered that and Kostielney's comment that she didn't interpret anything in the reports as implying fraud of any kind laid his concerns to rest.

He asked to elaborate on another comment in the minutes related to the CARES work in Northern States Power Case/dba Xcel Energy. \$50,000 under-recovery, \$450,000 over-recovery was part of the normal updating process – not due to CARE intervention. They routinely update as the case proceeds, and that's what occurred in that case, according to Mr. Donovan.

He also commented on the origin of Act 304. Ballot proposals D and H, which led to 1982 Act 304 evolved from a big public fight over whether there should be automatic adjustment clauses for things like fuel and purchased power that operate without notice and hearing, and that was handled very publicly. What emerged were two competing ballot proposals and Supreme Court case because one of the ballot proposals got more affirmative votes than the other. This funding was set up as part of the legislative implementation of all that discussion in order to make sure that there was a process where the consumer was going to be represented by counsel through intervention in these cases, the PSCR and GCR cases, the two cases in each, to make sure there was oversight of that and that the public interest was represented. It wasn't intended originally as a funding device for general rate case participation or participation in other cases, but to assure that in these cases, the public was represented. I think when you start awarding funds for a general rate case, as you've dealt with many times, I think even though there's relationship, you get to that issue of Act 304. He raised specific concern over the issue in the MEC 10-04 Budget Amendment request regarding underutilization of generating capacity noting that it sounded like an excess capacity issue. Utilities are part of regional power pools. So when you talk about plants not being operated, it's because they weren't the desirable plant to operate in a bigger footprint than just Michigan. And so if you're talking about there being fixed costs that are being paid, you're really talking about whether or not these units are needed, which has always traditionally been a rate case kind of issue.

Also the Commission recently opened a docket, per the direction of the legislature, dealing with whether Michigan should form a state electric power pool.

Kostielney thanked Mr. Ault for the information. She noted that as we look at the historical moment that brought this legislation to birth, we really need to consider and understand what's happened, as happens in every case of every valid issue, what environmental factors are on the landscape that modify or may adjust or may change that. We have to be fluid and flexible in understanding what that means and bring to bear the wisdom of research and reflection that I've always found among the attorneys that represent the cases here. We have -- when I said distinguished earlier, I was very serious about that. It was not just kind of a pro forma comment; we are graced with vision, people, creativity certainly, and people that are challenged, the persons involved in these, this enterprise. It seems to me we've really made a giant step in moving from simple funding conversation to the depth of the issue, and that to me is a very important awareness that we have, and even moving into an area like having the environment be a very important consideration in what we do. She thanked everyone for their input.

VIII. Next meeting

A. The next regular meeting of the UCPB is scheduled Monday, June 7, 2010, 10:00 a.m.

IX. Adjournment – Meeting adjourned at 11:35 a.m.